



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of:

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

HMO/169233

PRELIMINARY RECITALS

Pursuant to a petition filed October 7, 2015, under Wis. Stat. § 49.45(5)(a), and Wis. Admin. Code § HA 3.03, to review a decision by the Division of Health Care Access and Accountability ["DCHAA"] in regard to Medical Assistance ["MA"], a Hearing was held via telephone on November 11, 2015. At petitioner's request a Hearing scheduled for October 29, 2015 was rescheduled.

The issue for determination is whether it was correct for petitioner's MA contracted Health Maintenance Organization ["HMO"], Independent Care Health Plan ["iCare"], to deny funding for Ensure for petitioner.

There appeared at that time via telephone the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

BY: [REDACTED] General Counsel
iCare
1555 N. Rivercenter Drive
Suite 206
Milwaukee, WI 53212

ADMINISTRATIVE LAW JUDGE:

Sean P. Maloney
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (40 years old; CARES # [REDACTED]) is a resident of Milwaukee County, Wisconsin.
2. Petitioner is eligible for MA and is member of iCare HMO. Exhibit #2.
3. Petitioner requested Ensure, an enteral nutritional supplement product, from iCare. Exhibits #1 & #2.
4. iCare denied petitioner's request for Ensure. Exhibits #1, #2, #3A & #3B.
5. Petitioner has diagnoses of anorexia nervosa (without bulimia) and kidney disease; he does not have a severe swallowing disorder due to oral-pharyngeal tissue injury, trauma, excoriation, or structural defect; he does not have pathology of the GastroIntestinal ["GI"] tract that prevents digestion, absorption, or utilization of nutrients that cannot otherwise be medically managed; he is not transitioning from tube feeding to an oral diet (he is able to eat solid food). Exhibits # 2, #3A & #3B.

DISCUSSION

The Wisconsin Department of Health Services ["DHS"] may enter into contracts for MA services with HMOs. Wis. Admin. Code § DHS 104.05(1) (December 2008); see also, Wis. Stat. § 49.45(9) (2013-14). Services available to MA recipients must be identified in the provider's contract with DHS and must be made known to all enrollees. Wis. Admin. Code § DHS 104.05(4) (December 2008). With certain exceptions, all HMOs that contract with DHS must provide to enrollees all MA services that are covered services at the time the MA HMO contract becomes effective. Wis. Admin. Code § DHS 107.28(1)(a)1.intro. (August 2015); See also, Wis. Stat. § 49.46(2) (2013-14).

MA may only reimburse providers for medically necessary and appropriate health care services and equipment listed in sections 49.46(2) and 49.47(6)(a) of the Wisconsin Statutes, as implemented by chapter DHS 107 of the Wisconsin Administrative Code. Some services and equipment are covered if a request is submitted and approved in advance of receiving the service. Some services and equipment are never covered by the MA program.

Ensure requires Prior Authorization ["PA"] before MA will cover it. Wis. Admin. Code § DHS 107.10(2)(c) (August 2015). In determining whether to approve or disapprove a request for PA the limitations imposed by pertinent federal or state statutes, rules, regulations, or interpretations must be considered. Wis. Admin. Code § DHS 107.02(3)(e)9. (August 2015). Written state policy limitations provide as follows:

MA covers general purpose enteral nutrition products, such as that requested by petitioner, when a member is diagnosed with one of the medical conditions listed below, meets all of the required clinical criteria, and supporting clinical documentation is submitted and meets MA guidelines.

General purpose enteral nutrition products may be covered if the member has been diagnosed with one of the following medical conditions¹:

¹ In addition, all of the following are clinical criteria that must be met for general purpose enteral nutrition products: the member's medical condition is chronic; adequate nutrition is not possible with dietary adjustment; a diet of regular- or altered-consistency table foods (soft or pureed foods) and

- A severe swallowing disorder due to oral-pharyngeal tissue injury, trauma, excoriation (i.e., lesions, mucositis), or structural defect. (*Note:* For members with a diagnosis of a severe swallowing disorder, documentation must also include speech and swallow evaluations and feeding recommendations.)
- Pathology of the GI tract that prevents digestion, absorption, or utilization of nutrients that cannot otherwise be medically managed.
- Transition from tube feeding (enteral or parenteral) to an oral diet. (*Note:* Members transitioning from tube feeding to an oral diet may receive approval one time for up to six months to assist with the transition.)

ForwardHealth Topic #14817 (Covered Enteral Nutrition Products) – found online & Exhibit #2 (p. 142); See also, Wis. Admin. Code § DHS 107.10(4)(t) (August 2015).

Petitioner does not have one of the required diagnosis. Therefore, it was correct for *iCare* to deny funding for Ensure.

CONCLUSIONS OF LAW

For the reasons discussed above, it was correct for petitioner's MA contracted HMO (*iCare*) to deny funding for Ensure for petitioner.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby DISMISSED.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

beverages is not nutritionally sufficient and nutritional requirements can be met only using enteral nutrition products; and, a physician, physician assistant, or advanced practice nurse prescriber has prescribed or ordered the enteral nutrition product. A complete description of the clinical circumstance that justifies the requested use of the enteral nutrition product must be documented on the request. *ForwardHealth* Topic #14817 (Covered Enteral Nutrition Products) – found online & Exhibit #2 (p. 142); See also, Wis. Admin. Code § DHS 107.10(4)(t) (August 2015).

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 8th day of December, 2015

\sSean P. Maloney
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 8, 2015.

iCare
Division of Health Care Access and Accountability